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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,345	02/11/2005	Darren James Mansfield	P/3610-56	4657
2352	7590	09/19/2007	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			ROBINSON, BINTA M	
		ART UNIT		PAPER NUMBER
		1625		
		MAIL DATE	DELIVERY MODE	
		09/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/524,345	MANSFIELD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Binta M. Robinson	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,4,6,8,9 and 12-22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 2,4,6,8,9,13-15 and 17-21 is/are rejected.
- 7) Claim(s) 12, 16, 22 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ .   | 6) <input type="checkbox"/> Other: ____ .                         |

**Detailed Action**

The 112, first paragraph rejection of claims 1-9, 11-16, 22 on page 2 of the office action mailed 8/11/06 is rendered moot in light of applicant's amendment filed 10/12/2006.

**(new rejection)**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 6, 8-9, 13, 14, 15, 17-21 are rejected under 35 U. S. C. 103(a) as being unpatentable over Moloney et. al. (See Reference N). Moloney teaches the compound of formula I wherein A1 is a substituted 2-pyridyl, A2 is optionally substituted phenyl, L is -(C=O)-, R1 is hydrogen, and A2 is phenyl which can have up to five substituents. Moloney also teaches specific species such as compounds 1, 3, 12 and 17 which are obvious over the compound in line 2 of claim 21, page 7. (See page 15). See lines 5-30 on page 1 for the prior art genus.

The difference between the prior art compound and the instantly claimed compound is the alkylene group between the pyridyl group and the benzamide moiety. In the instant compound, alkylene group is ethylene. In the prior art compound, alkylene group is a methylene group. The prior art compound and the instant

Art Unit: 1625

compound are homologues of each other. Homologues are compounds that differ by a methylene linkage. Here, the Moloney compounds are also fungicides as are the instant compounds. See line 4 of page 2.

It would have been obvious to one of ordinary skill in the art to synthesize homologues of this class of compounds and compositions. Accordingly, the compounds are deemed unpatentable therefrom in the absence of a showing of unexpected results for the claimed compounds over those of the generic prior art compounds.

Claims 12, 16, 22 are objected to because they are based on a rejected claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binta M. Robinson whose telephone number is (571) 272-0692. The examiner can normally be reached on M-F (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Janet Andres can be reached on 571-272-0867.

A facsimile center has been established. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machine are (703)308-4242, (703)305-3592, and (703)305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1600.



BMR  
September 16, 2007



JANET L. ANDRES  
SUPERVISORY PATENT EXAMINER